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File No. Constitution II / 52(R)

Legal Deptt.

B **BRANCH**

P.15(E)

Subject:— Rules under the Constitution of India

File No. Constitution II / 52 (R)

Gen. 194 è.

229-B

Legal Department.

Revised draft Regulations are sent herewith.

Revised draft Regulation 4(3). As pointed out in this Department Opinion No.340 dated 12th January 1952 if a Government Officer is appointed as a Member of the Commission he ceases to have a lien on his former post in Government service. His service as a Member cannot therefore be treated as continuous service for the puposes of retirement and pension under the rules applicable to him in his former service. Sub-regulation (3) has accordingly been revised.

Revised draft Regulation 6, Explanation. Explanation (ii) and (iii) in the Department's draft has been deleted in consequence of the amendment made in regulation 4(3).

Revised draft Regulation 5,7,8 and 9. Please see remarks on draft Regulation 4(3). For the same reasons these regulations have been revised.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R.to P.& S.D.No.10093, dated the 17th June 1952.

RHB.
3.7.

LEGAL DEPARTMENT.

Draft Rules embodying the suggestions made in the Education Department note at pages 45-48 ante are sent herewith. The following remarks are made:

(a) Rule 3(4).- The draft rule 3(4) at page 15 ante provides inter alia that if the number of the elected representatives was less than 15 the remaining members should be nominated by the Governor in accordance with the provisions of rule 4(1). Under the Delimitation of Parliamentary and Assembly Constituencies (Bombay) Order, 1951 issued under sections 6 and 9 of the Representation of the People Act, 1950, the number of seats reserved for Scheduled Tribes in the Assembly Constituencies in Table 'B' of the said order is 29. That being so, the question of the number of representatives of Scheduled Tribes being less than 15 cannot arise. The latter half of rule 3(4) of the Rules on page 15 ante has therefore been omitted in the revised draft rule 3(4). Consequential change has been effected in rules 4 and 5 of the revised draft.

(b) Rule 16.- Sub-rule (2) has been added on the lines of rule 8 of the Bombay Legislature Members Travelling Allowance Rules. Education Department is requested to verify whether the rule is suitable from the administrative point of view.

(c) Rule 17.- Since new sub-rule (5) of rule 13 provides for submitting the minutes of dissent which is to form part of the proceedings of the meeting of the Council, it will be necessary to send a copy of such minutes to the Governor as also ~~xhx~~ to the Secretary, Education Department. Rule 17 has been amended accordingly.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R.to E.D.No.153-L, dated the 15th July 1952.

RHB.3.7.

Legal Department.

In place of the draft rules at page 29 ante, revised draft rules are sent herewith. The proposed rules will have to be made under the proviso to article 309 of the Constitution.

2. The appointment of Registrar, City Civil Court can be made by promotion from the establishment of the City Civil and Sessions Court, Bombay, while that of the Registrar, City Sessions Court and Deputy Registrar, City Civil Court, from the Subordinate establishment of the City Civil and Sessions Court, Bombay. In order not to leave scope for any argument and doubt, the Home Department is requested to ascertain whether the establishment of the City Civil and Sessions Court, Bombay is distinguishable from the subordinate establishment of the City Civil and Sessions Court, Bombay, before the draft rules are issued.

Id/- B.P.DALAL.
Additional Deputy Secretary to Government.

U.R.to H.D.No.760-Confl., dated the 2nd August 1952.

RHB.
3.7.

Office of the R.L.A.

R.L.A's opinion No.362 dated the 15th April 1952 at page 51 ante is confined to signing of orders or instruments of the Government referred to in clause (2) of Article 166 of the Constitution. The implications of Article 166 have been fully explained by Mukherjee J. in Pangarkar's case. According to him Article 166 has to be read as a whole. Clause (1) of Article 166 is confined to cases where the executive action requires to be expressed in the shape of a formal order or notification or any other instrument. Whatever executive action is to be taken by way of an order or instnument it shall be expressed to be taken in the name of the Governor in whom the executive power of the State is vested and it shall further be authenticated in the manner specified in the rules framed by the Governor. While clause (1) of Article 166 relates to the mode of expression of an executive order or an instrument, clause (2)lays down the way in which such order is to be authenticated; and when both these forms are complied with, an order or instrument would be immune from challenge in a court of law on the ground that it has not been made or executed by the Governor of the State. It will be apparent from the above observations of Mukherjea J. that what clause (2) of Article 166 lays down is the manner in which orders and other instruments which embody the executive action of the Governor are to be authenticated. Such orders and instruments are to be authenticated in accordance with the rules made by the Governor. The Governor has made rules under clauses(2) and (3) of Article 166 called "The Bombay Government Rules of Business". Under rule 11 of those Rules all orders or instruments made or executed by or on behalf of the Governor of the State have to be expressed to be made by order of or executed in the name of the Governor. Rule 12 of those Rules provides that every order or instrument of the Government of the State shall be

signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistent Secretary or such other officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument. Rule 12 thus provides for the authentication of orders amde and executed in the name of the Governor. If such order was authenticated by any of the Officers mentioned in rule 12, the order could not be attacked on the ground that it was not made or executed by the Governor. Since the order is the order made and executed in the name of the Governor it is immaterial whether in fact such an order is passed by the Cabinet, the Minister or the Secretary of a Department. It is not necessary under this rule that a Secretary of a department who passes any order should sign the order himself. If he does not sign the order hi-self no implication can arise that the order was not passed by him but was passed by the officer who authenticated it. To save time an Assistant Secretary can, therefore, authenticate an order made and executed in the name of the Governor irrespective of the fact that in actual fact such an order was not made by him. The result, therefore, is that orders or other instruments made and executed in the name of the Governor which involve the taking of an executive action or decision should be authenticated by any of the officers mentioned in rule 12 of the Rules of Business. As regards matters which do not involve taking of any executive decision, there would be no objection to following the procedure suggested in Chief Secretary's note on page 58 *ante*

Id/- P. M. Lad.

Remembrancer of Legal Affairs.

U.R.to P. & S.D. No.560-Secret., dated 16th June 1952.

RHB.
3.7.

Legal Department.

Subject to the following remarks a revised draft notification is sent herewith.

2. Under the Rules as they stand at present-

(a) in Appendix 'A' Provincial Services are classified under Revenue, Home, General, Educational and Public Works Departments, and Provincial Posts are classified under Revenue, Home, General, Educationl, Public Works, Political and Services, and Legal Departments;

(b) in Appendix 'B' Subordinate Services are classified under Revenue, Home, Political and Services, Finance, Legal, Public Works, General and Educationx Departments.

(c) In Appendi& 'C' and 'D' the rules prescribing the qualifications of candidates for and methods of recruitment to different services follow the classification made in Appendices 'A' and 'B'.

The existing organization of the Departments of the Secretariat, however, materially differs from that mentioned in the Classification and Recruitment Rules. E.g. The General Department, no longer exists. New Departments like the Development Department, Local Self Government and Public Health Department, Agricultural and Forests Department have been created and certain Civil Services and Posts have ceased to be under the control of the Departments under which they are shown in Appendices A and B to the Rules. In the circumstances, if the amendments as proposed by the P. & S.D. are effected in the Rules without disturbing the present structure of Appendices A and D of the Rules, they would not present the correct present position as regards the Departments and services under their control, e.g. the Bombay Money

Lenders.....

Lenders Service which is proposed to be included in services under the control of the Revenue Department is, in fact, under the control of the Development Department. The P & S.D. may, therefore, consider whether the Appendices to the Rules should not be revised and brought up-to-date.

3. In some of the rules proposed to be incorporated in the Rules, a selected candidate is required to pass an examination in Hindustani (e.g. see draft rules in P & S.D. draft at pages 373,378,379,381,384, 385,386,387 ante). In view of Government Resolution, Political and Services Department No. 2514/34 dated 1st September 1951 by which Government servants are required to pass an examination in Hindi, it appears that selected candidates would now have to pass in Hindi and not Hindustani. The revised draft provides accordingly.

4. In the P & S.D. draft, the rules regarding qualifications of candidates and the methods of recruitment to the following posts are prescribed but no amendments for including the posts either in Appendix A or Appendix B are suggested by the P & S.D. namely:-

(a) Superintendent, Village Industries Experimental Workshops, Poona.

(b) Textile Officer for Industrial Co-operatives and Village Industries.

(c) Deputy Assistant Superintendent of Stamps, Bombay.

(d) Statistician at the Haffkine Institute, Bombay.

(e) Personal Assistant to the Director of Public Health for the Government of Bombay.

(f) Assistant Motor Vehicles Inspectors.

(g) Motor Vehicles Inspectors.

(h) Supervisors.

(i) District Labour Welfare Officer and

Assistant Labour Welfare Officer, Bombay.

P & S.D. is requested to consider whether Appendices A and B may be suitably amended for the purpose.

5. Clause 1(b)(2)(v) of the P & S.D. draft (page 365 ante).

It has been proposed to cancel rule 89 in Appendix C and to substitute in its place a new rule relating to the posts of Industrial Officers (Vide P & S.D. draft rule 89 at page 399 ante). Rule 89 refers to the posts of Wardens and Assistant Wardens of Weights and Measures. It appears, therefore, that the post of Warden of Weights and Measures and the Posts of Assistant Wardens of Weights and Measures are to be abolished. In that case not only entry (39) but entry (38) in Appendix A will have also to be deleted. The revised draft provides for such deletion. (vide clause I(b)(2)(v) of the revised draft- page 7).

5A. The proposed entry (31-M)(iii) under the heading "General Department" at page 364 refers to lecturers in Anatomy in Mahadevi Anandilal Podar Hospital, Bombay. It is presumed that there are lecturers in Anatomy in the Hospital.

6. Amendment of clause (b) of rule 1 in Appendix C (page 368 ante.)

In R.D. letter at page 109 ante it is stated that the posts of Assistant Backward Class Officers have been converted into the posts of second grade Deputy Collectors. It is presumed that in view of such conversion, it is not necessary to delete entry "(22) Assistant Backward Class Officers(Settlement)" under the heading "HOME DEPARTMENT" in part 'B' Posts' of Appendix A and rule 73 in Appendix C.

7. P& S.D. draft rule 12-M(page 370 ante.)

Clause (iii) of the P & S.D. draft rule 12-M

provides inter alia that the candidate shall possess D.C.D. diploma of Government recognized college of 10 years in a responsible position in the Public Works Department. It is presumed that the period of 10 years is relatable to experience in a responsible position in the P.W.D. The rule is revised accordingly (vide clause (iii) of rule 12-Q in the revised draft-page 19). P & S.D. may verify whether the rule as revised is suitable.

8. P & S.D. draft rule 28-A(page 371 ante.)

It is not clear from sub-rule (6) of the P & S.D. draft rule 28-A as to whether the upper age limit in the case of law and commerce graduates is intended to be extended upto 27 or 28 years. (vide rule 28-G in the revised draft-page 27).

It is presumed that it is to be extended upto 27 years.

9. P& S.D. draft rules 28-B and 28-C(page 373-374 ante.)

The posts of the Superintendent, Village Industries Experimental Workshops, Poona and the Textile Officer for Industrial Cooperative and Village Industries belong to the Bombay Cooperative Service, Class II (vide D.D. Letters at pages 275 and 297 ante). Therefore, rules relating to the said posts cannot be inserted under the heading "Bombay Money Lender's Service" as proposed by P & S.D. The rules will have to be inserted under the heading "Bombay Cooperative Service" in Appendix C. In the revised draft they have been accordingly inserted. (vide rules 28-A and 28-B in the revised draft-pages 22-23.)

10. P & S.D. draft rules 32-A and 32-B (page 374 ante.)

It is presumed that the posts of the Assistant Superintendent of Stamps and the Deputy Assistant Superintendent of Stamps belong to the Bombay Registration Service.

11. Amendment of rule 38-A(page 375 ante.)

Rule 38-A does not contain two sub-rules as presumed by P & S.D. Therefore, the proposed sub-rule (3) has been inserted as sub-rule (2) of rule 38-A in the revised draft (page 29.)

12. P & S.D. draft rule 47-E (page 375).

Rule 8 of the B.C.S.C.R. Rules provides inter alia that except in the case of services and posts excluded from the field of functions of the Commission by Regulations made in that behalf, appointments to Provincial Services and Posts shall be made by Government or by an authority empowered by Government in that behalf, after consultation with the Commission. This general provision will apply to the post of Statistician at the Haffkine Institute, it being a Provincial post. Therefore, it would not be necessary to specifically provide that ~~xxx~~-recruitment to the post shall be made through the Bombay Public Service Commission. The words "by recruitment by open selection through the Bombay Public Service Commission" have been omitted in the revised draft (vide rule 47-E in the revised draft page 31).

13. Amendment of rule 51(page 376 ante.)

(1) It is proposed to make special provisions regarding qualifications for the post of the Inspector for Visual Education which post belongs to the Bombay Educational Service, Class I (vide E & I.D.letter at page 185 ante). Consequently the general provisions contained in sub-rule (3) of rule 51 ~~xxx~~ will not be applicable to the post of the Inspector for Visual Education. In order to make this clear sub-rule (3) of rule 51 has been suitably revised. (vide clause III (ii) of the revised draft-page 33.).

(2) The amendment proposed by P & S.D. provides that the candidate must be certified to have adequate knowledge of one of the regional languages of the State of Bombay but does not specify the authority by whom he must be so certified. P & S.D. may consider whether

it would not be necessary to specify such authority.

(3) As the post of the Inspector for Visual Education belongs to the Bombay Educational Service, the provisions relating to the qualifications required for the post can be appropriately made in rule 51 which contains general provisions regarding qualifications required for any post belonging to the Bombay Educational Service. It would not be proper to insert a new rule 103-D as proposed by P & S.D. In the revised draft notification, the P & S.D. draft rule 103-D has been inserted as sub-rule (3A) of rule 51 (page 35).

14. P & S.D. draft rule 52-A(pages 376-377 ante).

(1) In the P & S.D. draft there are two rules relating to the post of the Curator of Libraries viz. rule 52-A(page 376 ante) and rule 103-C (page 403 ante). Out of these two rules, rule 103-C has been retained in the revised draft (vide page 97) and rule 52-A has been omitted on the presumption that the post of the Curator of Libraries belongs to the General Provincial Service. Rule 193-C in the revised draft has been drafted on the lines of the draft finally approved by Government (vide page 171 ante).

(2) According to rule 9 of the B.C.S.C.R. rules, all officers appointed to Class I of the Bombay Provincial Services, whether by recruitment or by promotion from Class II of the Services concerned, are required to enter into agreements in the form printed in Appendix E. By such agreements all such officers bind themselves to serve Government for a specific period and in default to forfeit to the Government the sum of rupees hundred. As the post of the Curator of Libraries belong to Class I of the Bombay Provincial Services (vide E & I.D. Letter at page 49 ante), the incumbent of that post will also be required, under the said rule 9, to bind himself as above. It does not appear necessary to

make special provisions in that behalf. The P & S.D. may, therefore, consider whether sub-rule (3) of the revised draft rule 103-C (vide page 99) may not be omitted.

15. P & S.D. draft rule 77-B(page 378 ante).

(1) For the reasons given in para 12 above, the words "by recruitment by open selection through the Bombay Public Service Commission" have been deleted in the revised draft (vide rule 77-B in the revised draft page 39).

(2) P & S.D. should verify whether there is a separate post of the Superintendent for Beggars Home in addition to the post of the Lady Superintendent for the Female Beggars' Home at Chembur. From the rule at page 107 ante is appears that there is a separate post of the Superintendent for Beggars' Homes. If it is so, the P & S.D. should incorporate the rule given at page 107 ante in the proposed notification.

16. P & S.D. draft rule 82-G(page 383 ante).

P & S.D. may consider whether it would not be desirable to specify the rank from which promotion to the post of Drugs Controller shall be made.

17. P & S.D. rule 82-Z(page 395 ante).

Para 4 of the P & S.D. draft rule 82-Z provides that candidates should possess such other qualifications and experience as are considered essential for the performance of the duties attached to the posts of professors. Such a provision would be vague unless qualification considered essential for the performance of duties of professors are specifically mentioned (vide rule 82-Z in the revised draft page 79).

18. P & S.D. draft rule 86-A(page 398 ante).

This rule provides inter alia that a candidate for the post of Assistant Industrial Statistician must possess a good degree in economics, statistics etc. The word "good" is vague. Therefore, instead

of using the word "good" the P & S.D. should specify the class of degree which the candidate should possess.

19. P & S.D. draft rule 103-D(page 405 ante).

This rule has been omitted from the revised draft and the provisions thereof have been incorporated in sub-rule (3-A) of the revised draft rule 51 (vide page 35).

20. P & S.D. draft rule 128(page 410 ante).

As there are eight sections in the Rules as they stand at present, section VIII in the P & S.D. draft has been renumbered as section IX in the revised draft. (vide page 109 of the revised draft).

21. Amendment of rule 24(Clause (8) on page 415 ante).

The amendments directed to be made to clause (c) of rule 24 by Government Resolution, Revenue Department No.3040/45, dated 1st July 1947 do not appear to have been incorporated in the rule. Clause (8) at page 415 ante has therefore been suitably revised so as to cover the amendments made by the said Government Resolution (vide clause IV(7) of the revised draft page 119).

22. P & S.D. draft rule 31-C(page 416 ante).

Clause (2) of the proviso to rule 10 of the B.C.S.C.R. Rules provides that appointments to subordinate services and posts mentioned in the Schedules to the Bombay Public Service Commission (Functions) (Bombay) Rules,1937, shall be made on the advise of the Commission Having regard to this provision the P & S.D. should omit the words "on the recommendations of the Public Service Commission" and "the appointment by nomination being through the Public Service Commission" occurring in sub-rule (4) of the draft rule 31-C and insert the entries relating to the posts of Inspector of Certified Schools (Junior), Assistant Inspector of Certified Schools (Head-Quarters) and Superintendents of Minor

Certified Schools) in the Schedule to the Bombay Public Service Commission (Functions)(Bombay) Rules, 1937, The aforesaid words have been omitted from the revised draft. (vide rule 31-C in the revised draft page 119.)

23. Amendment of rule 37 and P & S.D. draft rule 43-F (pages 417 and 420 ante.).

(1) For the reasons stated in para 22 above the words "on the recommendations of the Public Service Commission" occurring in clause (iii) of the proposed sub-rule (3) of rule 37 and sub-rule (4) of the P & S.D. draft rule 43-F have been omitted in the revised draft (vide clause (iii) of rule 37(3) in the revised draft page 123).

(2) The amendment proposed to sub-rule (2) of rule 37 on page 147 ante has not been included in the P & S.D. draft. The same has been included in the revised draft (vide clause IV (ii)(1)(a) of the revised draft page 121).

24. During the course of scrutiny of the draft amendments it is noticed that the draft amendments seek to implement orders issued by Government during the period from 1947-1951 with the result that the work of scrutiny has become voluminous and complicated. Moreover, since the recruitment Rules are statutory, it is necessary to implement the orders of Government by amending the said rules immediately after such orders are passed. The procedure adopted in this case for amending the said rules for implementing the orders spread over a period of four years is therefore not proper. It is suggested that in future the P & S.D. should kindly see that the orders issued by Government are implemented by amending the rules as soon as such orders are issued by Government. The delay in returning this file is regretted.

Id/- B.P.DALAL.

Additional Deputy Secretary to Government.

U.R. to P & S.D.No.17056/B, dated the 15th October 1952.

RHB.
3.7.

Office of the R.L.A.

In the year 1947-48 a total grant of Rs. 42,0007/- was paid to the Anglo-Indian Schools as follows-

(1) Maintenance Grant to Schools equal to	..	Rs.3,21,207/-
(2) Destitute Grant to poor students.	..	" 98,800/-

In the year 1948-49 the grants were regularized as follows:-

Maintenance grants	..	2,66,000/-
Destitute grants	..	1,72,000/-
		4,38,000/-

In the years 1949-50,1950-51, and 1951-52 grants were paid to the Anglo Indian Schools according to the revised formulae. In the year 1952-53 Government has decided to give the grant as follows:-

(1) Maintenance grant	..	3,21,207/-
(2) Destitute grant	..	98,800/-

In other words in the year 1952-53 Government decided to fall back upon the figures of 1947-48 in accordance with the provisions of Article 337 of the Constitution. Shri Gillespi in his letter on pages 629-631 c/s has represented to Government that the Destitute grant should not be reduced to that paid in 1947-48 but should be increased to that allocated in the year 1948-49, viz. Rs.1,72,000/-. In view of this representation it is proposed to adjust the grant under the two heads, namely, Maintenance grant and Destitute grant in such a way as to increase the Destitute grant and reduce the Maintenance grant so that the total grants to be paid in the year 1952-53 remain the same as in the year 1947-48. The question for consideration is whether it is possible to adjust the grants paid to Anglo-Indian Schools keeping the total grants to be paid during the year 1952-53 at the same figure as that in the year 1947-48. Since it is not proposed to enhance the grant for the benefit of the Anglo-Indian community in respect of education which was

made.....

made in the year 1947-48, there would not be any legal objection to adjusting the grant as requested by Shri Gillespi and agreed to by E.D. Such adjustment would not contravene the provisions of article 337 of the Constitution and would therefore be legally in order.

Id/- P.M.LAD.

Remembrancer of Legal Affairs.

U.R. to E.D.No.19787/B, dated the 26th November 1952.

RHB.
3.7.